

IN THE DISTRICT COURT OF THE UNITED STATES
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

WILLIAM LEE KIRBY, # 182340

Plaintiff,

vs.

LEON FORNISS, et. al., ,
Debtor.

CASE NO. 3:06-CV-456-WKW

AFFIDAVIT OF AND TESTIMONY OF ATTORNEY LARRY COOPER,
FORMER ATTORNEY OF PETITIONER

The Respondent, being first duly sworn, deposes and says on oath as follows:

1. My name is Larry G. Cooper
2. That I am over nineteen years of age and have a law practice in the State of Alabama.
3. That I was appointed on or about April 23, 2002 to represent William Lee Kirby on appeal from the Circuit Court of Lee County, Alabama to the Alabama Court of Criminal Appeals based upon a Sodomy 1st degree 2 counts and Rape 1st Degree whereby Mr. Kirby was found guilty of repeatedly sodomizing two child victims and raping one of the victims.
4. I did visit with Mr. Kirby while he was in jail on several occasions beginning May 14, 2002. On June 12, 2002 I filed a "Motion to Set an Appeal Bond for Defendant" and on June 17, 2002 Judge Harper granted that motion. I was able to file a Motion for Appeal Bond, which was granted and allowed Mr. Kirby to get out on bond during the pendency of his appeal and until a decision was made by the Alabama Court of Criminal Appeals.
5. I did receive, analyze and read two complete volumes I and II of the criminal trial transcript and the Clerks record.
6. I also met with Mr. Kirby, his step-father in my office and on the phone several occasions. I also spoke with witnesses in his case and I discussed in detail the facts and circumstances of his case with Mr Kirby at length.
7. I did legal research and along with that prepared and drafted a rough draft and ultimately a final draft and filed in a timely manner his appeal brief. I provided Mr. Kirby a copy as well. Later, the Assistant Attorney General filed a reply brief in a timely manner. I telephoned Mr. Kirby in regards to the States reply brief and what they alleged.

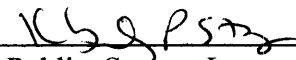
8. On September 10, 2002 I sent a letter to Mr. Kirby at his home address along with a copy of the my appeal brief I prepared on his behalf. I explained to him what would happen procedurally and if he had anything additional to add to his reply brief to contact me. I did not hear back from him by phone letter or in person during this time period.
9. On or about November 15, 2002 I received the Memorandum from the Court of Criminal Appeals affirming the lower courts conviction. On that same date November 15, 2002, I mailed a copy of that Order directly to Mr. Kirby. I advised him that he had 14 days to file a motion for rehearing and to appeal his conviction in state court. Otherwise, he would need to turn himself in and begin serving his state prison sentence.
10. I did not hear back from Mr. Kirby, neither by phone, fax or letter. I received a message that he may not have received the papers I sent him on November 15, 2002. I was able to confirm his address and On December 13, 2002 I second letter was sent to Mr. Kirby outlining his post- conviction appeal rights.
11. I heard nothing from Mr. Kirby or his family until I received a letter on or about April 10, 2003 from Mr. Kirby requesting that I release Volume I and Volume II of his criminal trial transcript to his father. A Mr. Joe Kirby came to my office on April 28, 2003 and signed a release to obtain, receive the trial transcript at Mr. Kirby's request and return it to me within 90 days. As I recall he did return it.
12. On December 19, 2005 I received a letter from William Lee Kirby from prison requesting ONLY copies of the Appellate Courts decision and a copy my brief. (Copy of this letter is attached hereto as an Exhibit). I had previously provided these same documents to Mr. Kirby, along with the complete Volume I and II trial transcript. I could only assume he lost or misplaced them.
13. On February 06, 2006 I received a letter from the Clerk of the Alabama Court of Criminal Appeals to provide copies to Mr. Kirby. No mention of any appeal by anyone as of this date.
14. Again on February 12, 2006 I drafted a letter and made a copy of 1. My Appellate Brief 2. Copy of the Attorney Generals Brief and 3. Memorandum of the Court of Criminal Appeals Decision. (Attached as Exhibit is a copy of that letter) I did mail these documents requested to Mr. Kirby in prison at Elmore, AL.
15. On or about May 01, 2006 Mr. Kirby's father, Joe Kirby called to tell me that William Kirby had not received the papers that he had requested. I advised him that I had sent them numerous times since November 2002. I confirmed Mr. Kirby's correct address with Joe Kirby and again drafted a letter on May 01, 2006 and sent the documents that William Lee Kirby was once again requesting. (see attached exhibit)
16. I have always maintained Mr. Kirbys file closed here at my office in Auburn, Al. I have been at this same location since June 2000 and have had the same office and fax number since 1995. At no time has William Lee Kirby asked or communicated to me that he wanted to pursue any Post-conviction relief, other than what I have filed prior to.

17. I make this affidavit on my personal knowledge.

Further affiant saith not.

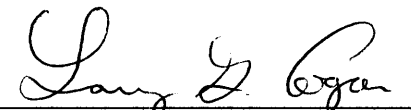

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on this 26th day of July
2005, in Lee County, Alabama, witness my hand and official seal of office.


Notary Public, State at Large
My Commission Expires: 11-3-06

CERTIFICATE OF SERVICE

I hereby certify the I have served a copy of the foregoing AFFIDAVIT upon William Lee Kirby, Petitioner by sending a copy of same by first class U. S. Mail, postage prepaid, and by electronic filing on this 26th day of July, 2006.


Larry G. Cooper
Respondent
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